

AMENDED IN SENATE MAY 11, 2004

AMENDED IN SENATE MAY 4, 2004

AMENDED IN SENATE APRIL 22, 2004

AMENDED IN SENATE APRIL 13, 2004

SENATE BILL

No. 1632

Introduced by Senator Figueroa

February 20, 2004

An act to add Sections 2254.5 and 17108 to the Corporations Code, and to add Section 7513.7 to the Government Code, relating to public pension systems.

LEGISLATIVE COUNSEL'S DIGEST

SB 1632, as amended, Figueroa. Public pension systems: investments.

Existing law declares that the retirement boards of public pension and retirement systems have fiduciary responsibility over the assets of the public pension or retirement systems.

This bill would require the public pension systems within the state, to the extent feasible, to obtain specified information from a corporation if the stock of the corporation is held by the system, as specified; to report to the Legislature regarding that information; and to make that information available to the public, except in certain circumstances. The bill would ~~provide that~~ *require* a corporation that submits information to those systems ~~that it knows or should know is false or contains material misrepresentations of fact may be subject to a \$10,000 civil penalty~~ *to include a signed statement from the chief operating officer or president of the corporation certifying that the*

information is true and complete. The bill would make related findings and declarations.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares as follows:

2 (a) California, as the sixth largest economy in the world,
3 attracts multinational corporations from throughout the globe and
4 its consumers and investors have tremendous influence on the
5 environment and public health worldwide.

6 (b) As the business activities of multinational corporations
7 extend across the globe, the practices of these corporations
8 increasingly affect the environment, public health, labor and
9 human rights of communities everywhere.

10 (c) Californians have little or no access to critical information
11 on corporate practices in California and abroad, as corporations
12 often are not required to publicly disclose their overseas
13 environmental, human rights, and labor practices, even though
14 they may be employing practices that violate human rights or are
15 harmful to communities or the environment.

16 (d) The disclosure of relevant information, both financial and
17 nonfinancial, is central to the ability of consumers and
18 shareholders to make sound economic decisions. Studies
19 increasingly show that good management of environmental and
20 social issues is linked to good overall management practices.

21 (e) Current securities disclosure rules and the Securities and
22 Exchange Commission do not provide adequate instruction and
23 enforcement to ensure that companies disclose the full scope of
24 potential material risks and liabilities stemming from
25 environmental or social harms. Poor disclosure or lack of
26 disclosure of social and environmental risks and liabilities can
27 constrain proper risk analysis and threaten shareholder value.

28 (f) Fiduciaries who manage funds for public pension systems,
29 such as the Public Employees' Retirement System and the State
30 Teachers' Retirement System, need better and more
31 comprehensive information about corporate environmental and
32 social practices in order to evaluate a company's internal controls,
33 financial risks, and earnings potential.



SEC. 2. Section 2254.5 is added to the Corporations Code, to read:

2254.5. Any corporation that submits information to a public pension system in the state pursuant to subdivision (a) of Section 7513.7 of the Government Code ~~that it knows or should know is false or that contains material misrepresentations of fact is subject to the penalty provisions under subdivision (f) of Section 7513.7 of the Government Code.~~ *shall include a signed statement from the chief operating officer or president of the corporation certifying that the information submitted is true and complete.*

SEC. 3. Section 17108 is added to the Corporations Code, to read:

17108. Any limited liability company that submits information to a public pension system in the state pursuant to subdivision (a) of Section 7513.7 of the Government Code ~~that it knows or should know is false or that contains material misrepresentations of fact is subject to the penalty provisions under subdivision (f) of Section 7513.7 of the Government Code.~~ *shall include a signed statement from the chief operating officer or president of the company certifying that the information submitted is true and complete.*

SEC. 4. Section 7513.7 is added to the Government Code, to read:

7513.7. (a) Each public pension system in the state shall, to the extent feasible, request the following information from any corporation described in subdivision (b) *on at least a biyearly basis, except that any public pension system in the state may gradually phase in the number of corporations from which it requests this information during an initial three-year period:*

(1) Whether the corporation has adopted and monitors compliance with international human rights standards, including the International Labor Organization's Core Labor Principles, as expressed in its Declaration on Fundamental Principles and Rights at Work.

(2) Whether the corporation has been cited or penalized for public health or human rights, environmental, employment, consumer protection, or corruption-related violations abroad or domestically and, if so, the cumulative value of the penalties.

(3) Whether the corporation has adopted an environmental management system or is a member of CERES or the Global

1 Reporting Initiative, to ensure that its facilities, contractors, and
2 key subcontractors are environmentally responsible.

3 (b) This section shall apply to any corporation if the capital
4 stock of the corporation is held within the internal equity index
5 fund of an investment portfolio of the respective public pension
6 system. This section does not apply to small businesses as defined
7 by the Small Business Administration.

8 (c) Each public pension system shall report *periodically* to the
9 Legislature regarding the corporate information received pursuant
10 to this section and shall make that information available to the
11 public by whatever means the system deems feasible, including
12 posting the information on the system's Web site, unless to do so
13 would be inconsistent with the system's fiduciary duties to its
14 members and retirees.

15 (d) Nothing in this section shall be construed to limit the ability
16 of a public pension system to execute its fiduciary duty, including
17 its ability to diversify investments, or to require any public pension
18 system to make any investment decision or to impose different or
19 additional criteria on existing or potential investments.

20 (e) Any action taken by a public pension system with respect
21 to a corporation that fails to provide the information requested
22 under this section shall be consistent with the system's fiduciary
23 duty to act as a prudent investor.

24 ~~(f) A corporation that submits information under this section~~
25 ~~that it knows or should know is false or contains material~~
26 ~~misrepresentations of fact may be subject to a civil penalty not~~
27 ~~exceeding ten thousand dollars (\$10,000) for every violation. An~~
28 ~~action under this subdivision may be filed only by the Attorney~~
29 ~~General, a district attorney, or a city attorney.~~

30 (f) *Each corporation that submits information under this*
31 *section shall include a signed statement from the chief operating*
32 *officer or president of the corporation certifying that the*
33 *information submitted is true and complete.*

